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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/726,928

12/03/2003

Scott Weller

4701

25853 7590 09/17/2007
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EXAMINER

MALONE, STEVEN J

ART UNIT	PAPER NUMBER
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3609

MAIL DATE	DELIVERY MODE
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09/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/726,928

Applicant(s)

WELLER, SCOTT

Examiner

Steven J. Malone

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/03/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is a first Office Action Non-final rejection on the merits. The preliminary amendment dated 12/03/2003 is acknowledged. Claims 1-12 have been canceled and claims 13-25, as preliminarily filed, are currently pending.

Specification

2. The disclosure is objected to because of the following informalities: line 10 pg. 2 recites "that are have", it is taken to mean "that have"; line 16 pg. 2 recites "consumer than buys", it is taken to mean "consumer then buys"; line 20 pg. 3 recites "the store sales" it is believed to be "the internet sales". Appropriate correction is required.

Claim Objections

3. Claims 13 and 25 are objected to because of the following informalities:

in claim at 13, lines 13 and 14, two distinct claim limitations are labeled with "c");

at line 2, the phrase "having a base terminal is for use by a consumer", is taken to mean "having a base terminal for use by a consumer" for purposes of examination;

at line 17, the phrase "said purchase", this is taken to mean "said purchasing" for purposes of examination;

in claim 25 at line 1 the recitation "The method of claim 22", this is taken to mean "The method of claim 24" for purposes of examination.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 13 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim is directed to neither a "process" nor a "machine," but rather embrace or overlap two different statutory classes of invention. The claim begins by introducing a method, then, in the preamble of the claim, proceeds to discuss specifics of a system. "A claim of this type is precluded by the express language of 35 U.S.C 101 which is drafted so as to set forth the statutory classes of invention in the alternative only." See MPEP §2173.05(p) II or *Parte Lyell*, 17 USPQ2d 1548 (B.P.A.I., 1990).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 13-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 13-25, the claims are directed to neither a "process" nor a "machine," but rather embrace or overlap two different statutory classes of invention. It is therefore

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unclear whether Applicant is claiming a process or a machine. See MPEP §2173.05(p) II or *Parte Lyell*, 17 USPQ2d 1548 (B.P.A.I., 1990).

8. In claim 13, lines 4-5 and 11, the phrase "a retail store building" is recited two times rendering the claim indefinite (the examiner does not know if the second recited "a retail store building" is the same as the first recited "a retail store building"). In claim 13, lines 4 and 14, the phrase "a master code" is recited two times rendering the claim indefinite (the examiner does not know if the second recited "a master code" is the same as the first recited "a master code"). In claim 13, line 2 and line 21, the phrase "a consumer" is recited two times rendering the claim indefinite (the examiner does not know if the second recited "a consumer" is the same as the first recited "a consumer"). In claim 13, lines 7-8, and line 19, the phrase "a payment" is recited two times rendering the claim indefinite (the examiner does not know if the second recited "a payment" is the same as the first recited "a payment").

Claims 14-25 are indefinite because they depend on independent claim, 13 which is indefinite.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 13, 14 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Khosla et al. (2001/0032152) in view of Cronin (2001/0032145).

As per claim 13, Khosla et al. disclose a method of internet sales tracking with the steps of: visiting a retail store building (See [0026] lines 1-6 and [0028] lines 3-5), identifying a desired product (See [0028] lines 16-18), physically inspecting desired product (See [0028] lines 3-5), accessing an internet website that offers desired products for sale (See [0019] lines 1-9 and [0022] lines 5-10), purchasing product from internet website (See [0024] lines 1-3), entering a code during said purchase (See [0024] lines 23-28), and generating a payment to retail store (See [0032] lines 9-11).

However, Khosla fails to explicitly disclose receiving a code from a sales representative.

Cronin discloses receiving a code from a sales representative that can be used when making an online purchase via supplying customer with a site code that consists of the distributor's, or referral's, name (See [0038] lines 1-4).

From the disclosure of Cronin, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the mobile showroom system of Kohsla et al. to include receiving a code from a sales representative as taught by Cronin in order to facilitate customers with online purchase access pertinent to a particular vendor.

As per claim 14, Cronin discloses, that the Internet is access by customers, prospects, or clients (See [0032] lines 1-7 and [0037] lines 1-3).

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From the disclosure of Cronin, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the mobile showroom system of Kohsla et al. to include accessing the internet from home as taught by Cronin in order to facilitate customers with online purchase access pertinent to a particular vendor.

As per claim 19, Khosla et al. discloses, that the customer can view, touch, and inspect displayed merchandise before making an online purchase (See [0023] lines 1-4).

11. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Khosla et al. and Cronin as applied to claim 13 above, and further in view of Bezos et al. (6,029,141).

As per claim 15, the Khosla et al. and Cronin combination disclose all elements of the claimed invention, but fail to expressly disclose generating a payment to a retail store should not be completed until after the transaction is complete. Bezos et al. teach that commissions should be paid after the purchase transaction (See col. 2 lines 9-14).

Khosla et al., Cronin, and Bezos et al. all disclose a means for purchasing goods over the Internet using ID codes. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the online ordering of the Kohsla et al. and Cronin combination to include paying referral commissions after a purchase transaction is complete as taught by Bezos in order to facilitate equitable relations between merchants and vendors.

As per claims 16-18, the Khosla et al. and Cronin combination disclose all elements of the claimed invention, but fail to expressly disclose the combination of: a product code, a store identification code, and a sales representative code that is used to generate a sales commission to the sales representative.

Bezos discloses a URL code that is a combination of a product code, a store identification code, a sales representative code, and a commission code (See Col. 11 lines 1-15). Khosla et al., Cronin, and Bezos et al. all disclose a means for purchasing goods over the Internet using ID codes.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the online ordering of the Khosla et al. and Cronin combination to include a URL, for each displayed product, which contains a product code, a store identification code, a sales representative code, and a commission code as taught by Bezos in order to facilitate equitable relations between merchants and vendors including best accounting practices.

12. Claims 20-21 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Khosla et al. and Cronin as applied to claim 13 above, and further in view of Bakos 1998 ("The Emerging Role of Electronic Marketplaces on the Internet", Communications of the ACM, August 1998).

The Khosla et al. and Cronin combination disclose all elements of the claimed invention, but fail to expressly disclose the product to be a vehicle/power tool and test-driving a vehicle/power tool. Bakos discloses test driving a car and then purchasing a

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similar car on the Internet (See pg. 42 fourth paragraph). Khosla et al., Cronin, and Bakos are all directed to online purchasing.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the internet ordering of the Kohsla et al. and Cronin combination to include displaying vehicles/power tools for facilitating online purchases as disclosed by Bakos in order to achieve equitable relations between Internet-based electronic intermediaries and traditional intermediaries.

13. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Khosla et al. and Cronin as applied to claim 13 above, and further in view of Applicant Admitted Prior Art (Hereinafter "AAPA").

As per claims 22 and 23, the Khosla et al. and Cronin combination disclose all elements of the claimed invention, but fail to expressly disclose trying on clothing as a desired product. AAPA discloses that retailers are combating the practice of customers trying on dresses and then purchasing the dresses online by tearing off the wedding dress labels (See pg. 3 lines 1-8).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to online ordering of the Kohsla et al. and Cronin combination to include sample clothing for facilitating online purchases as disclosed by AAPA in order to ensure equitable relations between online retailers and bricks-and-mortar retailers.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Arnold et al. (6,016,504) discloses Internet clothing sales and commission distribution between merchants. Dworkin (7,139,724) discloses business cards used for Internet purchases. Cairns (6,173,267) discloses a method for product promotion. Leason et al. (6,251,017) discloses online reward validation and online redemption. Horstmann (6,363,356) discloses a referrer-based system for try/buy electronic software distribution. Goedken (2002/0082960) discloses an Internet-based customer referral system. Dixon (6,587,834) discloses a method for promoting interest in a website. Torrey (6,457,005) discloses a method and system for referral management. Pulliam et al. (6,609,108) discloses online car sales. Walker et al. (7,162,434) discloses a method and apparatus for facilitating the sale of subscriptions to periodicals.


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Malone whose telephone number is 571-270-5107. The examiner can normally be reached on Monday-Thursday 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynda Jasmin can be reached on 571-270-30333033. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SM

 9/11/07
LYNDA JASMIN
SUPERVISORY PATENT EXAMINER